

ESTTA Tracking number: **ESTTA722072**

Filing date: **01/21/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061215
Party	Defendant Piano Factory Group
Correspondence Address	ADAM R STEPHENSON ADAM R STEPHENSON LTD 40 W BASELINE RD, STE 101 TEMPE, AZ 85283 UNITED STATES adam@patentproblempro.com, janice@patentproblempro.com
Submission	Opposition/Response to Motion
Filer's Name	Adam R. Stephenson
Filer's e-mail	adam@patentproblempro.com, ipdocket@patentproblempro.com
Signature	/Adam Stephenson/
Date	01/21/2016
Attachments	Reply to Motion to Amend.pdf(35069 bytes) Exhibit 1 Motion to Amend.pdf(204158 bytes) Exhibit 2 Motion to Amend.pdf(3694389 bytes) Exhibit 3 Motion to Amend.pdf(304310 bytes) Exhibit 4 Motion to Amend.pdf(205639 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Schiedmayer Celesta GmbH,

Cancellation No.: 92/061,215

Petitioner,

Reg. No. 3,340,759

v.

Mark: SCHIEDMAYER

Piano Factory Group, Inc.

Registration Date: November 20, 2007

Respondent.

**RESPONDENT’S REPLY TO PETITIONER’S MOTION TO FILE FIRST
AMENDED PETITION FOR CANCELLATION**

Respondent Piano Factory Group, Inc. (“Respondent”) hereby submits its reply to Petitioner’s Schiedmayer Celesta GmbH (“Petitioner”) Motion to File its Amendment Petition for Cancellation.

FACTS

Respondent provided Petitioner with the enclosed Amended responses and documents to First and Second Sets of Interrogatories and First and Second Requests for Production of documents on January 14th. Copies had also been provided on December 29th, but were signed by the undersigned. Copies of the documents sent on the 14th, along with corresponding copies of Petitioners Requests, are enclosed as Exhibits 1, 2, 3, and 4, respectively. While through oversight, Respondent’s responses were signed by Respondent but not verified as of January 14th, Respondent is working to provide Petitioner with officially verified copies of the same.

The Cancellation Petition, paragraph 8 includes Petitioner's statement: "Upon information and belief, Piano Factory Group does not manufacture and has never manufactured pianos."

The Cancellation Petition, paragraph 9 includes Petitioner's statement: "In fact, Piano Factory Group was never the owner of the trademark Schiedmayer; and never manufactured a Schiedmayer product; and never had any control whatsoever over the quality of the Schiedmayer keyboard instrument."

The Cancellation Petition, paragraph 12 in its entirety reads:

The false and fraudulent obtaining and maintaining of the trademark Schiedmayer by the Piano Factory Group is likely to cause confusion and has caused confusion in the marketplace. Purchasers and potential purchasers are being falsely and fraudulently led to believe that some relationship exists between Piano Factory Group and the coveted and highly respected Schiedmayer keyboard instrument. Schiedmayer has been and is continuing to be damaged by the false and fraudulent obtaining of a trademark registrations for the mark Schiedmayer by Piano Factory Group.

The discovery provided by Respondent, Piano Factory Group, Inc., indicates that Respondent has and does manufacture pianos under the SCHIEDMAYER trademark and sells them to consumers. Respondent does this by purchasing pre-ordered pianos from contract manufacturers which it has selected to be branded as SCHIEDMAYER pianos and then affixing the SCHIEDMAYER trademark to them prior to their being offered for sale directly to consumers. Judicial notice can be taken of the fact that contract manufacturing is ubiquitous in product sales and marketing in today's modern economy.

Respondent's renewal application filed April 18th, 2014 shows a piano bearing the mark SCHIEDMAYER for sale to consumers within the past five years of the date of filing of the Cancellation Petition.

ARGUMENT

At the outset, the Respondent notes that under 37 CFR § 2.115, pleadings in a cancellation proceeding may be amended consistent with the guidelines of FRCP 15.

In the present case, Petitioner's counsel made no effort to contact Respondent's counsel to determine whether Respondent would give written consent. Accordingly, the amendment can only be made by leave of the Board. TBMP § 507.02 states that the Board "liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties...[W]here the moving party seeks to add a new claim or defense, and the proposed pleading thereof is legally insufficient, or would serve no useful purpose, the Board normally will deny the motion for leave to amend." Emphasis added. TBMP § 507.02(a) states "A long and unexplained delay in filing a motion to amend a pleading (when there is no question of newly discovered evidence) may render the amendment untimely." Emphasis added.

In *Media Online Inc., v. El Clasificado Inc.*, 88 USPQ2d 1285, 1286 (TTAB 2008), the Petitioner delayed filing its motion to amend the pleadings to add claims of descriptiveness and fraud for 7 months and until after Respondent's motion for judgment of the pleadings, though its motion relied on "facts within petitioner's knowledge at the time the petition to cancel was filed." The Board found that the Petitioner had unduly delayed filing its motion to amend since the evidence relied upon in its motion to amend was already publicly available (dictionary definitions and selections from Respondent's website).

In the present case, Petitioner filed the present Motion to Amend its Pleadings over 9 months after filing the original Cancellation Petition. Petitioner asks leave of the Board to amend to designate a Count I, Fraud and to add Count II, False Designation of Origin and Count III, Abandonment. Petitioner filed the Motion after receiving Respondent's discovery responses. Respondent's discovery provides evidence of sales of SCHIEDMAYER branded pianos within the previous 5 years of the filing date of the Cancellation Petition. Respondent's discovery is consistent with the specimen provided to the USPTO and which was publicly available to Petitioner at the time of filing of the Cancellation Petition. Furthermore the sales invoices provided in Respondent's discovery are further evidence of actual sales, all of which actually counter Petitioner's new allegations of abandonment. In other words, Petitioner now has even more evidence that the grounds it is attempting to add are legally and factually flawed than it did when it filed the original Cancellation Petition. Allowing the Petition to amend the complaint to add these grounds seems like moving this case entirely backwards from the direction discovery should be heading it.

Furthermore, the quoted portions above of paragraphs 8 and 9 of the Cancellation Petition demonstrate Petitioner evidently had information to support what would be analogous to a claim of Abandonment. The original Cancellation Petition, however, merely alleges fraud, which is why Petitioner is attempting to get the Petition amended to add Abandonment and False Designation of Origin as additional grounds. Accordingly, it apparent, that, at the time the original Cancellation Petition was filed, Petitioner had facts within its knowledge that would have suggested to Petitioner that it should have filed an Abandonment claim.

Allowing Petitioner to amend the complaint to add an Abandonment claim would prejudice Respondent in two ways: 1) the motion is unduly delayed, and 2) it furthers the efforts of Petitioner to again misrepresent to the Board that Respondent's discovery provided evidence that "Respondent has in fact never offered for sale or sold Schiedmayer pianos of any type, notwithstanding their filing of a Declaration of Use under Sections 8 and 15." Petitioner's Motion to Amend, p. 2. Petitioner wholly fails to provide any explanation as to why, after having facts in its knowledge at the time the original Cancellation Petition was filed, it only now, 9 months later during discovery, wishes to amend to add an Abandonment ground. Respondent will be prejudiced by the Board permitting Petitioner to add this ground as Respondent will now have to answer questions already asked and answered in the existing interrogatories and provide the same information. There is simply "no useful purpose" (TBMP § 507.02) in Petitioner's attempt other than to seek duplicative evidence during discovery.

Respondent raises the same undue delay arguments against Petitioner's motion to amend to add Count II, False Designation of Origin. Again, the quoted portion of the original Petition, paragraph 12, demonstrates that Petitioner apparently already had facts and information within its possession that allegedly established that consumers would be deceived by Respondent's use of the SCHIEDMAYER trademark for pianos as they would believe they would emanate from the Petitioner. If Petitioner already believed this and stated this in the original Petition, why did Petitioner delay 9 months in seeking to amend the complaint to add this count? Furthermore, Petitioner's allegation of False Designation of Origin in Count II is also legally defective and should be denied entry.

As the Board knows, to show False Designation of Origin, the Petitioner must prove:

1. That the defendant's mark is the same as, or a close approximation of, the plaintiff's previously used name or identity;
2. That the mark would be recognized as such, in that it points uniquely and unmistakably to the plaintiff;
3. That the plaintiff is not connected with the goods sold or the activities performed by the defendant under the mark; and
4. That the plaintiff's name or identity is of sufficient fame or reputation that, when the defendant's mark is used on its goods or services, a connection with the plaintiff would be presumed. Jeffery A. Handelman, *Guide to TTAB Practice* § 8.05[E] (2016)

Petitioner's description of its claim in count II fails to make *inter alia*, any factual allegations regarding point 2, how the SCHIEDMAYER mark, which is merely a person's last name, historically used for piano manufacturing companies and for celesta manufacturing companies, points uniquely and unmistakably to the Petitioner itself. Furthermore, Petitioner's allegations fail to adduce any explanation as to how, at the time of registration, "the mark in question pointed uniquely to the [Petitioner] as of the time the registration issued, not as of the time of the filing of the petition for cancellation." Jeffery A. Handelman, *Guide to TTAB Practice* § 8.05[D] (2016). Because the time of registration was over 11 years ago, it is legally critical for Petitioner to allege in the Petition at least some evidence that, 11 years ago, the mark SCHIEDMAYER pointed uniquely to Petitioner. Petitioner's vague allegations that "[a]ny consumer or potential consumer seeing a Schiedmayer piano product in the marketplace or being offered for sale will assume that it emanates from Schiedmayer, the petitioner herein" in para. 13 of the Amended Petition are not pleaded facts, but merely legal conclusions.

Respondent will be significantly prejudiced by the Board permitting amendment of the complaint to include Count II, False Designation of Origin. This is because Respondent and Petitioner will now have to now prepare and take discovery to find facts relating all 4 points outlined above. Given that Respondent has already provided discovery to Petitioner in this matter, and Petitioner apparently had facts in its possession at the time the original Petition was filed 9 months ago, it is unreasonable and unduly burdensome for Petitioner to attempt to now add Count II. Permitting the Petitioner to engage in duplicative and recursive discovery as result of permitting amendment of the Cancellation Petition will significantly prejudice the Respondent and will significantly delay the resolution of this matter because of Petitioner's undue delay.

In view of the foregoing, the Respondent respectfully requests that Petitioner's Motion to File its Amended Petition for Cancellation be denied.

Dated: January 21, 2015

Respectfully submitted,
/s/ Adam R. Stephenson
Adam R. Stephenson, LTD.
40 W. Baseline Rd., Ste 101
Tempe, AZ 85283
Tel: 480.264.6075
Fax: 480.718.8336
Email: adam@patentproblempro.com
Attorney for Respondent, Piano Factory
Group, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that one (1) copy of the foregoing RESPONDENT'S REPLY TO PETITIONER'S MOTION TO FILE FIRST AMENDED PETITION FOR CANCELLATION is being sent via email and U.S. Mail to Petitioner Schiedmayer Celesta GmbH's attorney of record as follows:

Michael J. Striker
Striker, Striker & Stenby
103 East Neck Road
Huntington, NY 11743
striker@strikerlaw.com

Dated: January 21, 2015

_____/s/ Adam Stephenson_____

Exhibit 1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Schiedmayer Celesta GmbH,

Cancellation No.: 92/061,215

Petitioner,

Reg. No. 3,340,759

v.

Mark: SCHIEDMAYER

Piano Factory Group, Inc.

Registration Date: November 20, 2007

Respondent.

**RESPONDENT'S AMENDED RESPONSES TO PETITIONER'S FIRST AND
SECOND SET OF INTERROGATORIES**

January 8, 2016

Respondent herewith submits the following responses to Petitioner's First and Second Set of Interrogatories as requested. At the outset, Respondent would like to inform the Petitioner that over the 8 years the registration has been in place, Respondent has experienced one or more computer system crashes that has resulted in the loss of data relating to Respondent's business, including the sales of pianos branded with the SCHIEDMAYER trademark. Respondent has been working diligently to attempt to reconstruct as much information as can be recovered, but there will be sales data and other information missing that Respondent is not likely to be able to produce despite its best efforts.

Respondent will address each interrogatory as follows:

INTERROGATORY NO. 1:

Identify by name and address all purchasers of Schiedmayer Pianos of any type within the past five years.

Due to the computer data loss, Respondent is not able to conclusively determine 1) the total quantity of all SCHIEDMAYER branded pianos sold and, correspondingly, 2) the name and address of every purchaser of the pianos for the past five years.

Respondent has been able to locate contact information on one purchaser but that purchaser has refused to allow name and address information to be shared at this time.

Respondent is aware that two or more SCHIEDMAYER branded pianos are currently in the piano rental pool of the Hollywood Piano Company.

INTERROGATORY NO. 2:

Identify the name and address of the manufacturer of the piano photographed as a specimen and submitted to the United States Patent and Trademark Office in connection with the Declaration of Use as filed for Registration No. 3,340,759.

American Sejung Corporation (ASC, now defunct)

1590 S. Milliken Ave, Unit H

Ontario, CA 91761

INTERROGATORY NO. 3:

Identify and explain the origin of the piano photographed and submitted to the United States Patent and Trademark Office in connection with the Declaration of Use filed in support of Registration No. 3,340,759.

This digital piano was purchased from ASC with no nameplate and then branded with a SCHIEDMAYER nameplate and placed on the sales floor.

INTERROGATORY NO. 4:

With respect to the photograph of an alleged Schiedmayer piano submitted to the USPTO in connection with the filing of a Declaration of Use, was a label or other object bearing the name Schiedmayer affixed to the piano in such manner that it would cover up the true manufacturer of the piano.

No.

INTERROGATORY NO. 5:

Does registrant manufacture pianos.

No, in the sense that it does not physically assemble the pianos sold in its own factory. It does manufacture pianos, however, in that it orders already manufactured pianos it has selected for use as SCHIEDMAYER branded pianos and sells them to consumers with a label/name plate affixed identifying the piano as a SCHIEDMAYER branded piano. In this sense, Respondent does manufacture pianos because until

Respondent affixes the label/name plate, the pianos are not branded for sale as any particular piano brand.

INTERROGATORY NO. 6:

If the answer to the above interrogatory is in the affirmative, set forth the name and address of the manufacturer of any such pianos.

American Sejung Corporation (ASC, now defunct)

1590 S. Milliken Ave, Unit H

Ontario, CA 91761

North American Music, Inc.
11 Holt Drive
Stony Point, NY 10980

INTERROGATORY NO. 7:

Set forth each type of advertising or other promotions with respect to Schiedmayer pianos of any type and for each such area of promotion and advertising, identify an example of any such advertisement or promotion.

The pianos are marketed directly to purchasers through being placed on the sales floor. An example of such promotion can be found in the specimens filed with the Statement of Use filed 9/10/2007 and with the renewal filed 4/18/2014.

INTERROGATORY NO. 8:

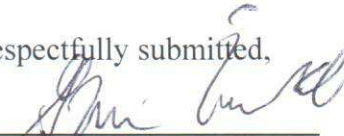
With respect to the Declaration of Use filed with respect to Registration No. 3,340,759, set forth the basis for the allegation that the trademark SCHIEDMAYER was in use in commerce in the United States at the time of filing of the Declaration of Use.

As the photograph of the piano filed as the specimen with the Declaration of Use indicates, a piano forte bearing the mark SCHIEDMAYER was for sale on the sales floor of the Hollywood Piano Company. As the Hollywood Piano Company is frequented by buyers from in and out of the state of California, markets its activities on the internet (an instrumentality of interstate commerce), etc., the trademark SCHIEDMAYER was in use in interstate commerce as of the time of filing of the Declaration of Use.

Respondent reserves the right to supplement/correct the foregoing with relevant information as discovery progresses.

Dated: January 8, 2016

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Glenn Treibitz', is written over a horizontal line.

Glenn Treibitz

Respondent, Piano Factory Group, Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Schiedmayer Celesta GmbH,

Cancellation No.: 92/061,215

Petitioner,

Reg. No. 3,340,759

v.

Mark: SCHIEDMAYER

Piano Factory Group, Inc.

Registration Date: November 20, 2007

Respondent.

**RESPONDENT'S OBJECTION TO PETITIONER'S FIRST AND SECOND SET
OF INTERROGATORIES**

Pursuant to TBMP § (3), Respondent objects to any further response than that provided herein to Petitioner's Interrogatory #1 as it attempts to obtain confidential information that cannot be disclosed even under protective order.

Dated: January 14, 2016

Respectfully submitted,

/s/ Adam R. Stephenson

Adam R. Stephenson, LTD.

40 W. Baseline Rd., Ste 101

Tempe, AZ 85283

Tel: 480.264.6075

Fax: 480.718.8336

Email: adam@patentproblempro.com

Attorney for Respondent, Piano Factory
Group, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that one (1) copy of the foregoing RESPONDENT'S AMENDED RESPONSES TO PETITIONER'S FIRST AND SECOND SET OF INTERROGATORIES and one (1) copy of the foregoing RESPONDENT'S OBJECTION TO PETITIONER'S FIRST AND SECOND SET OF INTERROGATORIES is being sent via email and U.S. Mail to Petitioner Schiedmayer Celesta GmbH's attorney of record as follows:

Michael J. Striker
Striker, Striker & Stenby
103 East Neck Road
Huntington, NY 11743
striker@strikerlaw.com

Dated: January 14, 2015

/s/ Adam R. Stephenson
Adam R. Stephenson, LTD.
40 W. Baseline Rd., Ste 101
Tempe, AZ 85283
Tel: 480.264.6075
Fax: 480.718.8336
Email: adam@patentproblempro.com
Attorney for Respondent, Piano Factory
Group, Inc.

Exhibit 2

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Schiedmayer Celesta GmbH,

Cancellation No.: 92/061,215

Petitioner,

Reg. No. 3,340,759

v.

Mark: SCHIEDMAYER

Piano Factory Group, Inc.

Registration Date: November 20, 2007

Respondent.

**RESPONDENT'S AMENDED RESPONSES TO PETITIONER'S FIRST AND
SECOND SET OF DOCUMENT REQUESTS**

January 8, 2016

Respondent herewith submits the following amended responses to Petitioner's First and Second Set of Document Requests as requested.

Respondent will address each document request as follows:

DOCUMENT REQUEST NO. 1:

Produce examples of all promotion and advertising for Schiedmayer Pianos which have taken place within the past five years.

Respondent has produced in its initial disclosures an example via the photograph of the SCHIEDMAYER branded piano on sale in the past 5 years at the Hollywood Piano company as of the date of the filing of the renewal.

DOCUMENT REQUEST NO. 2:

Produce all documentation supporting the allegation made to the United States Patent and Trademark Office, that the trademark Schiedmayer was used on all of the goods set forth in the subject registration at the time Registrant's Declaration of Use was filed.

Respondent has produced in its initial disclosures a sales information screen indicating that an upright SCHIEDMAYER branded piano manufactured by ASC was on the sales floor between May to September of 2007, sold, and delivered to a customer on October 9, 2007. Due to computer system failures the Respondent is unable at this time to further comply with this request by producing additional sales documents.

DOCUMENT REQUEST NO. 3:

Produce all billing information and all other related information regarding all sales of any Schiedmayer Pianos which have taken place within the past five years.

Respondent has produced in its initial disclosures a sales information screen indicating that a grand SCHIEDMAYER branded piano manufactured by ASC was on the sales floor in April of 2010, sold, and paid off May 24, 2010. Due to computer system failures the Respondent is unable at this time to further comply with this request by producing additional sales documents.

DOCUMENT REQUEST NO. 4:

Produce all documents which support good cause for filing of a Declaration of Use and Incontestability with respect to Registration No. 3,340,759.

Respondent has produced in its initial disclosures a photograph of a SCHIEDMAYER branded piano forte. Respondent produces a second photograph it is possession of that is of the same piano. The remaining documents that support good cause are already of public record in the trademark file with the USPTO, i.e., the signature of Cheryl Fox, etc.

DOCUMENT REQUEST NO. 5:

Produce documents relating to the manufacture of the Schiedmayer Piano within the past 5 years.

Due to computer crashes, Respondent's documents relating to the manufacturing activities (i.e., invoices from the factories, etc.) are currently unavailable and Respondent is unable to comply at this time with this request. Respondent is working to identify any potentially relevant documents that it can retrieve. As an aid in this effort, Respondent has asked the former president of ASC to provide Respondent with a letter discussing ASC's manufacturing activities for Respondent but has not yet received that letter as of the due date of this document request. Respondent produces an email from Gary Galanti, President of North American Music, Inc., that contains Mr. Galanti's statement that North American Music, Inc., has been a source of pianos to Respondent that became SCHIEDMAYER branded pianos. Respondent will supplement its disclosures with all information it is able to locate documents relevant to this request.

DOCUMENT REQUEST NO. 6:

Produce all documents relating to the offering for sale of Schiedmayer Pianos.

Respondent is unable to comply beyond what it has produced during its initial disclosures due to the reasons outlined in Document Request No. 5.

DOCUMENT REQUEST NO. 7:

Produce all documents relating to the promotion of Schiedmayer Pianos within the past 5 years.

Respondent has produced in its initial disclosures photographs of pianos bearing the SCHIEDMAYER trademark which were located and offered for sale on the sales floor.

DOCUMENT REQUEST NO. 8:

Produce all documents relating to why and how Registrant adopted the name Schiedmayer as a trademark.

Respondent refers the Petitioner to the 2004 Office Action in the file history of the registration produced in Respondent's initial disclosures that explains the reason why Registrant adopted the SCHIEDMAYER trademark following its abandonment by Kawai Piano Company, the licensee of IBACH, which purchased the SCHIEDMAYER trademark for piano fortes from the Schiedmayer family in 1980.

DOCUMENT REQUEST NO. 9:

On April 18, 2014, Cheryl Fox, Vice President of Respondent, having agreed that willful false statements and the like are punishable by fine or imprisonment or both, stated that the mark SCHIEDMAYER has been in continuous use in commerce for five consecutive years from the date of registration or the date of publication, and is still in use in commerce in connection with digital pianos. Please produce all documents, including, without limitation, documents relating to promotion and sales and manufacture of digital pianos which supports this allegation.

Respondent is unable to comply beyond what it has produced during its initial disclosures due to the reasons outlined in Document Request No. 5.

DOCUMENT REQUEST NO. 10:

On April 18, 2014, Cheryl Fox, Vice President of Registrant, having agreed that willful false statements and the like are punishable by fine or imprisonment or both, stated that the mark SCHIEDMAYER has been in continuous use in commerce for five consecutive years from the date of registration or the date of publication, and is still in use in commerce in connection with upright pianos. Please produce all documents, including, without limitation, documents relating to promotion and sales and manufacture of upright pianos which supports this allegation.

Respondent is unable to comply beyond what it has produced during its initial disclosures due to the reasons outlined in Document Request No. 5.

DOCUMENT REQUEST NO. 11:

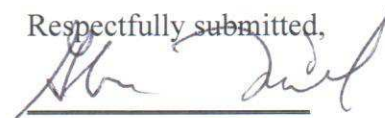
On April 18, 2014, Cheryl Fox, Vice President of Registrant, having agreed that willful false statements and the like are punishable by fine or imprisonment or both, stated that the mark SCHIEDMAYER has been in continuous use in commerce for five consecutive years from the date of registration or the date of publication, and is still in use in commerce in connection with grand pianos. Please produce all documents, including, without limitation, documents relating to promotion and sales and manufacture of grand pianos which supports this allegation.

Respondent is unable to comply beyond what it has produced during its initial disclosures due to the reasons outlined in Document Request No. 5. Respondent notes that the piano in the photograph used as a specimen for the renewal appears to be a grand piano.

Respondent reserves the right to supplement/correct the foregoing with relevant information as discovery progresses.

Dated: January 8, 2016

Respectfully submitted,


Glenn Treibitz

Respondent, Piano Factory Group, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that one (1) copy of the foregoing RESPONDENT'S RESPONSES TO PETITIONER'S FIRST AND SECOND SET OF DOCUMENT REQUESTS is being sent via email and U.S. Mail to Petitioner Schiedmayer Celesta GmbH's attorney of record as follows:

Michael J. Striker
Striker, Striker & Stenby
103 East Neck Road
Huntington, NY 11743
striker@strikerlaw.com

Dated: January 14, 2016

/s/ Adam R. Stephenson
Adam R. Stephenson, LTD.
40 W. Baseline Rd., Ste 101
Tempe, AZ 85283
Tel: 480.264.6075
Fax: 480.718.8336
Email: adam@patentproblempro.com
Attorney for Respondent, Piano Factory
Group, Inc.

Adam Stephenson

Subject: FW: No Name

-----Original Message-----

From: "Gary Galanti" <nam.garyg@gmail.com>

Sent: Tuesday, December 29, 2015 10:49am

To: glennt@hollywoodpiano.com

Subject: No Name

Hi Glenn,

For numerous years we have sold Hollywood Piano/Piano Factory no name pianos for use with their house brands. As far as we understand, the brands used on these pianos are registered to Hollywood Piano or one of it's affiliates. One of these being the Schiedmayer brand.

Hope all is well and I will see you soon.

Best regards,

Gary
President
North American Music



SCHIEDMAYER

Exhibit 3

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

Schiedmayer Celesta GmbH,)	
)	
Petitioner,)	
)	
v)	Cancellation No. 92/061,215
)	Reg. No. 3,340,759
Piano Factory Group, Inc.,)	Mark: SCHIEDMAYER
)	Registration Date: 11/20/2007
Respondent.)	
_____)	

PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT

October 28, 2015

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Trademark Rules of Practice 2.116 and 2.120, 37 CFR § 2.116 and 2.120, Petitioner herewith requests that Registrant answer under oath the following Interrogatories within 30 days after service thereof. These requests are deemed to be continuing so as to require prompt supplemental interrogatory answers should Registrant obtain additional responsive information between the time the answers are served and the time of the final hearing of this Opposition proceeding.

Definitions

The term 'identify' as used herein shall be deemed to include, without limitation in the case of an individual, the full name, business address and business title. In the case of a product or service, the term identify shall be deemed to include without limitation a complete indication of the type and intended purpose of each such product or service.

The terminology "each of" as used herein is intended to mean that the response thereto shall state the required information separately.

INTERROGATORY NO. 1:

Identify by name and address all purchasers of Schiedmayer Pianos of any type within the past five years.

INTERROGATORY NO. 2:

Identify the name and address of the manufacturer of the piano photographed as a specimen and submitted to the United States Patent and Trademark Office in connection with the Declaration of Use as filed for Registration No. 3,340,759.

INTERROGATORY NO. 3:

Identify and explain the origin of the piano photographed and submitted to the United States Patent and Trademark Office in connection with the Declaration of Use filed in support of Registration No. 3,340,759.

INTERROGATORY NO. 4:

With respect to the photograph of an alleged Schiedmayer piano submitted to the USPTO in connection with the filing of a Declaration of Use, was a label or other object bearing the name Schiedmayer affixed to the piano in such manner that it would cover up the true manufacturer of the piano.

INTERROGATORY NO. 5:

Does registrant manufacture pianos.

INTERROGATORY NO. 6:

If the answer to the above interrogatory is in the affirmative, set forth the name and address of the manufacturer of any such pianos.

INTERROGATORY NO. 7:

Set forth each type of advertising or other promotions with respect to Schiedmayer pianos of any type and for each such area of promotion and advertising, identify an example of any such advertisement or promotion.

INTERROGATORY NO. 8:

With respect to the Declaration of Use filed with respect to Registration No. 3,340,759, set forth the basis for the allegation that the trademark SCHIEDMAYER was in use in commerce in the United States at the time of filing of the Declaration of Use.

Respectfully submitted,



Michael J. Striker
Attorney for Petitioner
Reg. No.: 27233
103 East Neck Road
Huntington, New York 11743

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

Schiedmayer Celesta GmbH,)
)
)
)
v)
)
Piano Factory Group, Inc.,)
)
)
)
Respondent.)

Cancellation No. 92061,215
Reg. No. 3,340,759
Mark: SCHIEDMAYER
Registration Date: 11/20/2007

PETITIONER'S SECOND SET OF INTERROGATORIES TO RESPONDENT

November 11, 2015

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Trademark Rules of Practice 2.116 and 2.120, 37 CFR § 2.116 and 2.120, Petitioner herewith requests that Respondent answer under oath the following Interrogatories within 30 days after service thereof. These requests are deemed to be continuing so as to require prompt supplemental interrogatory answers should Respondent obtain additional responsive information between the time the answers are served and the time of the final hearing of this Opposition proceeding.

Interrogatory No. 9:

Set forth the name, title and address of the individual employed by Respondent having most information as to the issues set forth in this Petition for Cancellation.

Interrogatory No. 10:

Does Respondent believe that it had good cause to allege in its Declaration of Use and Incontestability, under pain of fine or imprisonment or both, that Respondent had been using in commerce for five consecutive years, the trademark Schiedmayer on digital pianos.

Interrogatory No. 11:

If the answer to the foregoing interrogatory is in the affirmative, please set forth all facts which support this allegation, including, without limitation, sales of Schiedmayer marked digital pianos and the names and addresses of purchasers thereof; including the name and address of the manufacturer of the said digital pianos.

Interrogatory No. 12:

Does Respondent believe that it had good cause to allege in its Declaration of Use and Incontestability, under pain of fine or imprisonment or both, that Respondent had been

using in commerce for five consecutive years, the trademark Schiedmayer on upright pianos.

Interrogatory No. 13:

If the answer to the foregoing interrogatory is in the affirmative, please set forth all facts which support this allegation, including, without limitation, sales of Schiedmayer marked upright pianos and the names and addresses of purchasers thereof; including the name and address of the manufacturer of the said upright pianos.


Interrogatory No. 14:

Does Respondent believe that it had good cause to allege in its Declaration of Use and Incontestability, under pain of fine or imprisonment or both, that Respondent had been using in commerce for five consecutive years, the trademark Schiedmayer on grand pianos.

Interrogatory No. 15:

If the answer to the foregoing interrogatory is in the affirmative, please set forth all facts which support this allegation, including, without limitation, sales of Schiedmayer marked grand pianos and the names and addresses of purchasers thereof; including the name and address of the manufacturer of the said grand pianos.

Respectfully submitted,



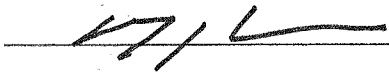
Michael J. Striker
Attorney for Petitioner
103 East Neck Road
Huntington, New York 11743

Certificate of Service

It is hereby certified that a true and complete copy of the attached document was served upon counsel for the Respondent at his address of record via first class mail and email on November 12, 2015 as follows:

ADAM R. STEPHENSON LTD.
40 West Baseline Road Ste. 101
Tempe. AZ
85283

adam@patentproblempro.com



Michael Striker

Exhibit 4

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

Schiedmayer Celesta GmbH,

Petitioner,

v

Piano Factory Group, Inc.,

Respondent.

Cancellation No. 92/061,215

Reg. No. 3,340,759

Mark: SCHIEDMAYER

Registration Date: 11/20/2007

PETITIONER'S REQUEST FOR PRODUCTION OF DOCUMENTS

October 28, 2015

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Petitioner herewith requests that Registrant produce the following documents within 30 days.

DOCUMENT REQUEST NO. 1:

Produce examples of all promotion and advertising for Schiedmayer Pianos which have taken place within the past five years.

DOCUMENT REQUEST NO. 2:

Produce all documentation supporting the allegation made to the United States Patent and Trademark Office, that the trademark Schiedmayer was used on all of the goods set forth in the subject registration at the time Registrant's Declaration of Use was filed.

DOCUMENT REQUEST NO. 3:

Produce all billing information and all other related information regarding all sales of any Schiedmayer Pianos which have taken place within the past five years.

DOCUMENT REQUEST NO. 4:

Produce all documents which support good cause for filing of a Declaration of Use and Incontestability with respect to Registration No. 3,340,759.

DOCUMENT REQUEST NO. 5:

Produce documents relating to the manufacture of the Schiedmayer Piano within the past 5 years.

DOCUMENT REQUEST NO. 6:

Produce all documents relating to the offering for sale of Schiedmayer Pianos.

DOCUMENT REQUEST NO. 7:

Produce all documents relating to the promotion of Schiedmayer Pianos within the past 5 years.

DOCUMENT REQUEST NO. 8:

Produce all documents relating to why and how Registrant adopted the name Schiedmayer as a trademark.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Striker', with a long horizontal flourish extending to the right.

Michael J. Striker
Attorney for Petitioner
Reg. No.: 27233
103 East Neck Road
Huntington, New York 11743

CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the attached document was served upon counsel for the Respondent at his address of record via first class mail and email on October 28, 2015 as follows:

Adam R. Stephenson LTD.

40 West Baseline Road, Ste. 101

Tempe AZ

85283

adam@patentproblempro.com

A handwritten signature in black ink, appearing to read 'M. Striker', is written over a horizontal line.

Michael Striker

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

Schiedmayer Celesta GmbH,)
)
)
)
v)
)
Piano Factory Group, Inc.,)
)
)
)
)
)

)

Cancellation No. 92061,215
Reg. No. 3,340,759
Mark: SCHIEDMAYER
Registration Date: 11/20/2007

PETITIONER'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

November 11, 2015

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Petitioner herewith requests that Respondent produce the following documents within 30 days:

Document Request No. 9:

On April 18, 2014, Cheryl Fox, Vice President of Respondent, having agreed that willful false statements and the like are punishable by fine or imprisonment or both, stated that the mark SCHIEDMAYER has been in continuous use in commerce for five consecutive years from the date of registration or the date of publication, and is still in use in commerce in connection with digital pianos.

Please produce all documents, including, without limitation, documents relating to promotion and sales and manufacture of digital pianos which supports this allegation.

Document Request No. 10:

On April 18, 2014, Cheryl Fox, Vice President of Registrant, having agreed that willful false statements and the like are punishable by fine or imprisonment or both, stated that the mark SCHIEDMAYER has been in continuous use in commerce for five consecutive years from the date of registration or the date of publication, and is still in use in commerce in connection with upright pianos.


Please produce all documents, including, without limitation, documents relating to promotion and sales and manufacture of upright pianos which supports this allegation.

Document Request No. 11:

On April 18, 2014, Cheryl Fox, Vice President of Registrant, having agreed that willful false statements and the like are punishable by fine or imprisonment or both, stated that the mark SCHIEDMAYER has been in continuous use in commerce for five consecutive years from the date of registration or the date of publication, and is still in use in commerce in connection with grand pianos.

Please produce all documents, including, without limitation, documents relating to promotion and sales and manufacture of grand pianos which supports this allegation.

Respectfully submitted,




Michael J. Striker
Attorney for Petitioner
103 East Neck Road
Huntington, New York 11743

Certificate of Service

It is hereby certified that a true and complete copy of the attached document was served upon counsel for the Respondent at his address of record via first class mail and email on November 12, 2015 as follows:

ADAM R. STEPHENSON LTD.
40 West Baseline Road Ste. 101
Tempe. AZ
85283

adam@patentproblempro.com



Michael Striker